IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 26852 of 2005

Between:

E.Pedda Yerri Swamy

..... PETITIONER

AND

The Director of Prohibition and Excise,

A.P., Hyderabad and 2 others

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the proceedings in Rc.No.889/2005/D2, dated 06.10.2005 issued by the 2nd respondent, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

The petitioner is the President of Tappers Cooperative Society (TCS), Kanekal village and Mandal, Ananthapur District. Apart from Toddy shop of Kanekal, eight other villages toddy shops viz.,Ramnagar, Devagiri, D.Honnur, Genegera, Gangalapuram, Govindawada, Garudacheda and Udegolam were also tagged on to the TCS, Kanekal. The license for establishment of toddy depot was issued for a period of five years ie. from 01.04.2002 to 31.03.2007. It is stated that the petitioner has been carrying on toddy business without any adulteration of toddy in respect of Kanekal TCS and all other eight TFT shops.

While so, a case was registered in Cr.No.90/2005-06 dated 04.10.2005 by the Kanekal Proh.& Excise Station, alleging that one Bestha Bramhaiah, resident of Garudachedu village of Kanekal Mandal, who is also TFT member of Garudachedu TFT shop, was found transporting toddy of 5 cans in a Jeep bearing No.AP02-U5578 and the said Jeep was found at the Meendlapalli bus stop. On interrogation, it is stated that the said Bestha Bramhaiah has been transporting the said toddy to the depot of one Ediga Panduranga so as to supply the same to the TFT shops of Garudachedu, Thumbiganuru, Meendlapalli, D.Honnur and Govindawada villages. It is further stated that the said toddy is being supplied since last one week to the said depot owner Panduranga and the said depot owner Panduranga is also paying Rs.400/- per day to him for the said transportation. It is also stated that the said toddy was tested with prescribed chemicals on the spot and found adulterated with Chloral Hydrate, and after drawing samples under cover of panchanama, one of the sample was sent to the Chemical Examiner, Government Regional, Prohibition & Excise

Laboratory, Chittoor. On the said allegations, the depot license of the petitioner bearing L.No.5/2002 issued for a period of 5 years from 01.04.2002 to 31.03.2007 and the license of its eight constituent shops TCS Kanekal bearing L.No.81/2002 was suspended pending enquiry, under Section 31(1)(b) of A.P.Excise Act, 1968 (for short 'the Act').

The learned counsel for the petitioner submits that the samples sent from the Court of the Judicial Magistrate of First Class, Rayadurg in Cr.No.90/2005-06 was tested by the Chemical Examiner, Government Regional Prohibition and Excise Laboratory, Chittoor and sent his report in C.E.No.314/2005-06, dated 21.10.2005, stating that the sample of toddy is found free from Chloral Hydrate and Diazepam. It is stated that even after receipt of report of the Chemical Examiner dated 21.10.2005, the suspension order dated 06.10.2005 has not been revoked.

No doubt the suspension of license pending enquiry is ancillary to the power of suspension under Section 31(1)(b) of the Act. But as per the judgment of the Full Bench of this Court in ***Tappers Co-op.Society Maddur Vs.Supdt. of Excise (FB),*** if there is any possibility of giving a show cause notice, the excise authorities shall give a notice before suspension. But, however, if there is a danger to the public life, in order to prevent the sale of adulterated toddy, it is always open for the licensing authority to suspend the license. In the instant case, no inspection was made in respect of any of the shops of the petitioner and even according to the panchanama, one Bestha Bramhaiah was found transporting 5 cans of toddy to the toddy depot of Ediga Panduranga, who is not a member of TFT Kanekal. When the TFT shops are tagged on to the society, the society alone can carry on business on toddy.

However, having regard to the facts and circumstances of the case, as the toddy sample sent to the Chemical Examiner, Government Regional Prohibition & Excise Laboratory, Chittoor, has been found free from Chloral Hydrate and Diazepam, I am of the opinion that continuation of suspension of license of the petitioner shop and other

8 TFT shops pending enquiry, is illegal and unsustainable. Therefore, the impugned order dated 06.10.2005 is set aside, keeping it open for the 2nd respondent to issue a show cause notice to the petitioner and pass appropriate orders, in accordance with law, after giving a reasonable opportunity to the petitioner.

With the above observations, the Writ Petition is allowed. No order as to costs.

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V.ESWARAIAH.J

Dated: 16.12.2005

Dsr

Note:

Issue CC in three days

B/o

Dsr